



**Fourth Follow-up Policy Monitoring  
Review of Maverick County's  
Indigent Defense Systems**

**April 2022**



## **Background**

The Texas Indigent Defense Commission (TIDC) monitors local jurisdictions' compliance with the Fair Defense Act (FDA) through on-site reviews.<sup>1</sup> These reviews seek to promote local compliance and accountability with the requirements of the Fair Defense Act and to provide technical assistance to improve county indigent defense processes.

### **November 2008 Initial Monitoring Review**

In November 2008, TIDC issued a policy monitoring report on Maverick County's indigent defense practices. This initial report made recommendations concerning:

- Methods to document counsel requests on the magistrate warning form;
- Procedures for taking requests for counsel and promptly transmitting the financial paperwork to the courts;
- Prompt rulings on counsel requests; and
- The distribution of attorney appointments in felony cases.

Maverick County responded by noting that it had updated the magistrate warning form to include a space to request counsel. Magistrates were to provide financial paperwork to requesting defendants, and this paperwork was to be transmitted to the courts. The response further noted that once the paperwork was completed, the information was to be sent to the appointing judge within one day of receipt. As to the distribution of felony attorney appointments, the response noted a lack of available attorneys who wished to receive appointments.

### **January 2010 Follow-up Monitoring Review**

TIDC issued a follow-up report in January 2010. TIDC found the County had adopted the new magistrate warning form and arrestees were given the ability to request counsel at the Article 15.17 hearing. However, the procedures for obtaining financial information and transmitting counsel requests to the courts were still problematic. As a result, many court appointments were untimely. TIDC did not further examine the distribution of appointments, since TIDC had little knowledge of the availability of criminal defense attorneys in the County. The County responded to the report by agreeing to ensure that:

- Jail staff provide assistance to arrestees in completing affidavits of indigence;
- Jail staff transmit requests for counsel and their accompanying affidavits to the administrative district court for felonies and to the county court for misdemeanors; and

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<sup>1</sup> TEX. GOV'T CODE § 79.037(a)–(b).

- The courts rule on counsel requests in a timely manner.

### **November 2012 Follow-up Monitoring Review**

In November 2012, TIDC issued a second follow-up report. TIDC found that jail staff were meeting with inmates every weekday morning and were providing arrestees with financial forms for requesting counsel. Jail staff transmitted completed forms to the courts. However, new procedures did not address the requests made by arrestees who made bail prior to meeting with jail staff. Regarding appointments of counsel, TIDC found the courts did not rule on requests made by defendants who made bail. When courts appointed counsel for detained defendants prior to case filing, the appointment was often a temporary appointment, and courts replaced counsel after the indictment without a finding of good cause. In misdemeanor cases, defendants who had requested counsel at the Article 15.17 hearing would sometimes enter an uncounseled plea without a ruling on the request.

In response to the report, the County adopted a document to record the following information: whether the defendant requested counsel at the Article 15.17 hearing; whether the defendant received the financial questionnaire and assistance in completing it; and whether the paperwork was forwarded to the courts. This documentation was designed to be an alert that a request for counsel needed to be ruled upon by the courts. As to the continuity of counsel, the courts agreed that all appointments would follow Article 26.04(j)(2)'s requirement that an attorney continue with the case unless good cause is entered on the record.

### **October 2017 Third Follow-up Monitoring Review**

TIDC issued a third follow-up report in October 2017. This report reexamined the distribution of attorney appointments, which it had not done since the initial 2008 review. The 2017 report found the distribution of attorney appointments met TIDC's threshold for presuming appointment procedures are fair, neutral, and nondiscriminatory. TIDC also found that attorneys appointed prior to an indictment now remained on the case through disposition. However, TIDC found the other findings from the 2012 report (procedures for sending requests to the courts, procedures for making timely appointments of counsel, and procedures for handling waivers of counsel) had not been addressed.

**Table 1: History of Monitoring Findings**

FDA Core Requirement	Description and Initial Year of Finding	Status before 2022 Review	
		Satisfied	Pending
1. Prompt Magistration	The magistrate warning form did not include a space to record a counsel request. (2008)	✓ (2010)	
1. Prompt Magistration	Magistrates did not inform the arrestees of the right to counsel or make a record as to whether the defendant requested counsel. (2008)	✓ (2010)	
1. Prompt Magistration	Magistrates did not have a process to ensure assistance in completing financial affidavits or to ensure those affidavits were sent to the appointing authority within 24 hours of the request being made. (2008)		✓
4. Prompt Appointment	In felony cases, timeliness in sample cases did not meet TIDC's threshold for presuming a jurisdiction's processes ensure timely appointments. (2008)		✓
4. Prompt Appointment	In misdemeanor cases, timeliness in sample cases did not meet TIDC's threshold for presuming a jurisdiction's processes ensure timely appointments. (2010)		✓
4. Prompt Appointment	In misdemeanor cases, the court did not rule on all counsel requests prior to procuring a waiver of counsel. (2012)		✓
4. Prompt Appointment	The language used for waivers of counsel did not match Article 1.051(g). (2017)		✓
4. Prompt Appointment	Attorneys appointed prior to indictment were replaced after indictment. (2012)	✓ (2017)	
5. Attorney Selection	The distribution of appointments was uneven (2008).	✓ (2017)	

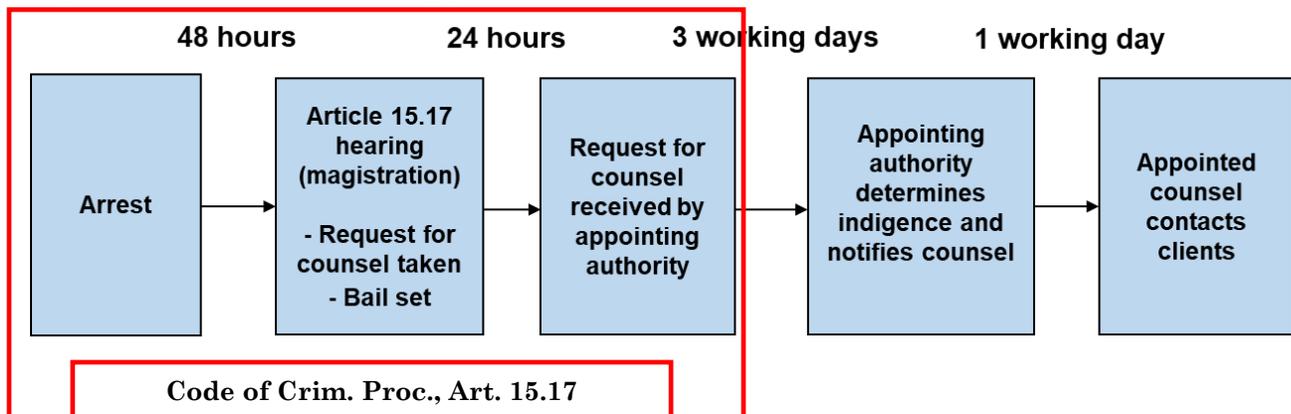
## Fourth Follow-Up Review

TIDC’s policy monitoring rules require follow-up reviews of counties where the report included noncompliance findings.<sup>2</sup> Staff members Nicolas Sawyer and Joel Lieurance conducted a third follow-up review with on-site visits to Maverick County between October 18 and October 21, 2021 and on November 10, 2021. TIDC examined the following records: the local indigent defense plan; felony and misdemeanor case files that were filed between October 2019 and February 2020 and maintained by the district and county clerks; and magistrate warning forms maintained by the Eagle Pass Municipal Court and the Maverick County Justices-of-the-Peace. TIDC also observed a felony docket for the 293<sup>rd</sup> District Court.

### REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS

Under Article 15.17 of the Code of Criminal Procedure, an arrested person must be brought before a magistrate within 48 hours.<sup>3</sup> At this hearing, the magistrate must inform the person of the right to counsel, inform the person of the procedures for requesting counsel, and ensure the person has reasonable assistance in completing the necessary forms for requesting counsel.<sup>4</sup> Magistrates must transmit requests for counsel to the appointing authority within 24 hours.<sup>5</sup> If a person is arrested on an out-of-county warrant, the magistrate must perform the same duties as if the person were arrested on an in-county warrant.<sup>6</sup>

**Figure1a: Timeline for Appointment of Counsel in Adult Criminal Cases**



<sup>2</sup> 1 TEX. ADMIN. CODE § 174.28(d)(3).

<sup>3</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>4</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>5</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>6</sup> TEX. CODE CRIM. PROC. ART. 15.18(a). A list of contacts to send out-of-county requests is available at: <http://tidc.tamu.edu/public.net/Reports/OutOfCountyArrestContacts.aspx>.

*Local Practices for Conducting Magistrate Warnings*

In Maverick County, defendants who are in jail are promptly brought before a magistrate for Article 15.17 hearings. As a result of previous reviews, jail staff developed procedures to provide assistance in completing affidavits of indigence. Jail staff send misdemeanor requests to the county judge and felony requests to the local administrative district judge. The county judge and local administrative district judge confirmed they receive requests, but TIDC has been unable to ascertain whether they receive all requests.<sup>7</sup>

Based on jail staff procedures and statements from the judges, it appears counsel requests are sent to the courts. However, because none of these requests are ruled upon, it appears that requests are not always transmitted within 24 hours.

**FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1**

**Conduct prompt and accurate magistration proceedings.**

**April 2022 Finding and Recommendation 1:** Article 15.17(a) of the Code of Criminal Procedure requires magistrates to ensure reasonable assistance with the completion of forms necessary to request counsel. Article 15.17(a) also requires these forms to be transmitted to the appointing authority within 24 hours of the request. TIDC was unable to verify whether all requests are promptly sent to the courts. Magistrates must ensure reasonable assistance with completing affidavits of indigence and must ensure requests are transmitted to the courts within 24 hours.

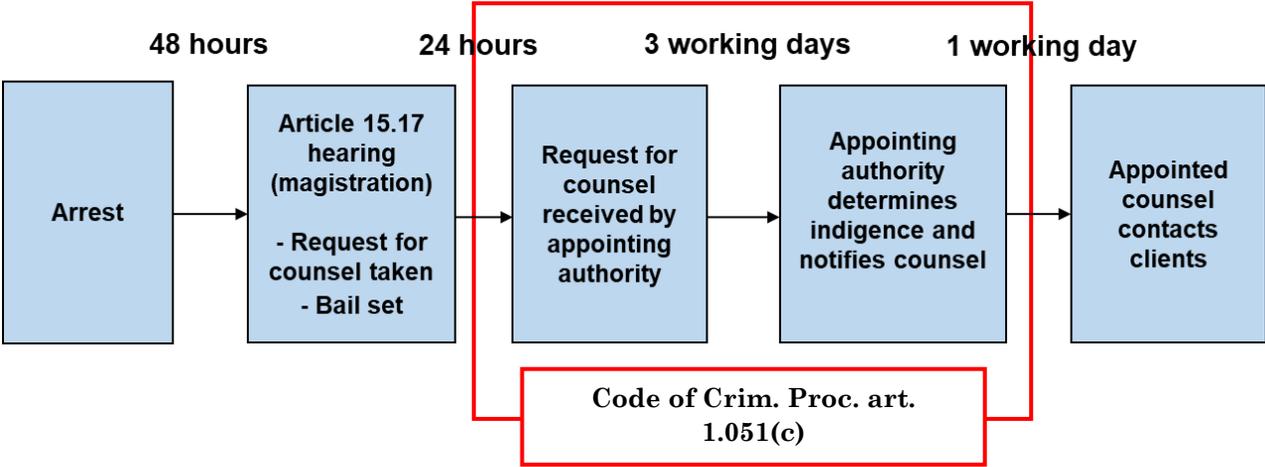
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<sup>7</sup> This confirmation occurred during a call with Maverick County judges on August 13, 2021.

**REQUIREMENT 4: APPOINT COUNSEL PROMPTLY**

Under Article 1.051(c) of the Code of Criminal Procedure, courts in counties with a population under 250,000 must rule on a request for counsel within three working days of receiving the request.

**Figure 1b: Timeline for Appointment of Counsel in Adult Criminal Cases**



Under Article 15.17 and local procedures, the first opportunity for most defendants to request counsel is at the Article 15.17 hearing, when a defendant appears before a magistrate and is informed of the charges against him or her. If a defendant makes bail before the Article 15.17 hearing (or is never brought before a magistrate), the defendant has his or her first opportunity to request counsel at the initial appearance in the trial court. Historically in Maverick County, many defendants request counsel at the Article 15.17 hearing, but few of those defendants receive appointed counsel.

**Table 2: Article 15.17 Requests for Counsel and Resulting Appointments**

Year	2017	2018	2019	2020	Texas 2020
Misdemeanor Counsel Requests at Art. 15.17 Hearing	740	683	643	522	n/a
Misdemeanor Cases Paid	22	25	31	28	149,070
Misdemeanor Cases Disposed	916	1,470	657	486	304,810
Misd. Cases Paid / Misd. Cases Disposed	2%	2%	5%	6%	49%
Felony Counsel Requests at Art. 15.17 Hearing	244	226	211	328	n/a
Felony Cases Paid	68	112	98	25	183,123
Felony Cases Disposed	96	104	136	96	207,142
Felony Cases Paid / Felony Cases Disposed	71%	108%	72%	26%	88%

To assess the timeliness of local appointment procedures, TIDC examines case files and measures the time from counsel request until appointment of counsel or denial of indigence. TIDC examined all cases filed in the first part of FY2020 (October 2019 to February 2020).<sup>8</sup>

***Timeliness of Appointment in Felony Cases***

TIDC examined 40 felony cases filed between October 2019 and February 2020. TIDC was able to match magistrate warning forms with 16 of these case files.<sup>9</sup> Counsel requests were not ruled upon in a timely manner for any case in which the defendant requested counsel at the Article 15.17 hearing. Counsel was appointed in a timely manner in 50% of cases examined. This falls below TIDC’s 90% threshold for presuming a jurisdiction’s practices ensure timely appointment of counsel. Maverick County must implement practices that satisfy Article 1.051(c)(1)’s timeline in felony cases.

**Table 3: Times to Appointment in Felony Cases**

	Sample Size	Number from sample	Percent
Total Cases Examined	40		
Total cases with a counsel request		22	
<b>Appointment / denial of indigence occurred in:</b>			
0 work days		9	
1 – 3 work days + 24 hour transfer		2	
<b>Total timely appointments / denials</b>		<b>11</b>	<b>50%</b>
4 - 6 work days + 24 hour transfer		0	
More than 6 work days + 24 hour transfer		9	
No ruling on request		2	
Total untimely appointments / denials		11	50%

***Timeliness of Appointments in Misdemeanor Cases***

TIDC examined 111 misdemeanor cases filed between October 2019 and February 2020. TIDC was able to match magistrate warning forms with 51 of these case files. Counsel requests were not ruled upon for any case in which the defendant requested counsel at the Article 15.17 hearing. TIDC did not find any denials of indigence or counsel appointments. Counsel was appointed in a timely manner in 0%

<sup>8</sup> TIDC examined cases from the first five months of FY2020 to mitigate COVID-19 effects on our analysis.

<sup>9</sup> TIDC was unable to find magistrate warning forms for the other 24 cases. In cases in which TIDC could not find magistrate warning forms, TIDC assumed that none of these defendants requested counsel at the Article 15.17 hearing. This assumption allows for a conservative estimate of counsel appointment timeliness.

of cases examined. This falls below TIDC’s 90% threshold for presuming a jurisdiction’s practices ensure timely appointment of counsel. Maverick County must implement practices that satisfy Article 1.051(c)(1)’s timeline in misdemeanor cases.

**Table 4: Times to Appointment in Misdemeanor Cases**

	Sample Size	Number from sample	Percent
Total Cases Examined	111		
Total cases with a counsel request		28	
<b>Appointment / denial of indigence occurred in:</b>			
0 work days		0	
1 – 3 work days + 24 hour transfer		0	
<b>Total timely appointments / denials</b>		<b>0</b>	<b>0%</b>
4 - 6 work days + 24 hour transfer		0	
More than 6 work days + 24 hour transfer		0	
No ruling on request		28	
Total untimely appointments / denials		28	100%

***Waivers of Counsel in Misdemeanor Cases***

Article 1.051 of the Code of Criminal Procedure addresses waivers of counsel and allows waivers that are voluntarily and intelligently made. Under Article 1.051(f-1), the prosecutor may not initiate a waiver and may not communicate with a defendant until any pending request for counsel is denied, and the defendant waives the opportunity to retain private counsel. Under Article 1.051(f-2), the court must explain the procedures for requesting counsel to an unrepresented defendant and must give the defendant a reasonable opportunity to request counsel before encouraging the defendant to communicate with the attorney representing the state. If a defendant enters an uncounseled plea, the defendant must sign a written waiver, the language of which must substantially conform to the language of Article 1.051(g).

TIDC found two sample cases in which misdemeanor defendants requested counsel at the Article 15.17 hearing and later waived counsel and entered uncounseled pleas without their requests being ruled upon. The absence of a ruling on a pending request raises the possibility of several statutory violations, including untimeliness (Art. 1.051(c)) and invalid waiver of counsel (Art. 1.051(f-2)). Maverick County must ensure that its procedures for ruling on counsel requests meet the requirements of both Article 1.051(c) and 1.051(f-2).

In Maverick County, TIDC found that when defendants entered guilty pleas in misdemeanor cases, the waiver of counsel form used the language listed below.

WAIVER OF ATTORNEY

Now comes the Defendant \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the above styled and numbered cause in open Court and before having plead guilty / not guilty / no contest to the State's complaint and/or information as filed herein and announced that Defendant will plea \_\_\_\_\_ to said complaint and/or information and hereby requests the consent and approval of the Court to waive the right to have an attorney present and appointed herein, and does hereby upon the consent and approval of the Court waive said right.

\_\_\_\_\_  
Defendant

This language differs from the language of Article 1.051(g) shown below.

"I have been advised this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)"

After the court determines a waiver of counsel is voluntarily and intelligently made, the courts must use a written waiver that closely matches Article 1.051(g).

## FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

### **Appoint Counsel Promptly.**

**April 2022 Finding and Recommendation 2 (FELONY CASES):** Maverick County's felony appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(1), a county must rule on all requests for counsel within three working days. Maverick County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

**April 2022 Finding and Recommendation 3 (MISDEMEANOR CASES):** Maverick County's misdemeanor appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(1), a county must rule on all requests for counsel within three working days. Maverick County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

**April 2022 Finding and Recommendation 4 (MISDEMEANOR CASES):** The absence of a ruling on a pending request raises the possibility of several statutory violations, including untimeliness (Art. 1.051(c)) and invalid waiver of counsel (Art. 1.051(f-2)). Maverick County must ensure that its procedures for ruling on counsel requests meet the requirements of both Article 1.051(c) and 1.051(f-2).

**April 2022 Finding and Recommendation 5 (MISDEMEANOR CASES):** When defendants waive counsel for purposes of entering an uncounseled plea, the waiver must substantially conform to Article 1.051(g). The waiver language used by Maverick County does not match Article 1.051(g). When the Maverick County Court accepts uncounseled pleas, it must use a waiver form with language substantially conforming to Article 1.051(g).

## **Conclusion**

TIDC appreciates the professionalism and assistance provided by Maverick County officials and staff. Maverick County must respond to the report's findings and recommendations with a detailed action plan describing how it will resolve each issue. Some of the findings have been in place since 2008. Because of this delay in correcting past findings, TIDC will discuss these issues at our May 20, 2022 Policies and Standards Committee Meeting.

## **Monitoring Findings and Recommendations Remaining to be Addressed**

Maverick County must respond to the following findings and recommendations with a detailed action plan describing how it will resolve each issue.

**April 2022 Finding and Recommendation 1:** Article 15.17(a) of the Code of Criminal Procedure requires magistrates to ensure reasonable assistance with the completion of forms necessary to request counsel. Article 15.17(a) also requires these forms to be transmitted to the appointing authority within 24 hours of the request. TIDC was unable to verify whether all requests are promptly sent to the courts. Magistrates must ensure reasonable assistance with completing affidavits of indigence and must ensure requests are transmitted to the courts within 24 hours.

**April 2022 Finding and Recommendation 2 (FELONY CASES):** Maverick County's felony appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(1), a county must rule on all requests for counsel within three working days. Maverick County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

**April 2022 Finding and Recommendation 3 (MISDEMEANOR CASES):** Maverick County's misdemeanor appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(1), a county must rule on all requests for counsel within three working days. Maverick County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

**April 2022 Finding and Recommendation 4 (MISDEMEANOR CASES):** The absence of a ruling on a pending request raises the possibility of several statutory violations, including untimeliness (Art. 1.051(c)) and invalid waiver of counsel (Art. 1.051(f-2)). Maverick County must ensure that its procedures for ruling on counsel requests meet the requirements of both Article 1.051(c) and 1.051(f-2).

**April 2022 Finding and Recommendation 5 (MISDEMEANOR CASES):** When defendants waive counsel for purposes of entering an uncounseled plea, the waiver must substantially conform to Article 1.051(g). The waiver language used by Maverick County does not match Article 1.051(g). When the Maverick County Court accepts uncounseled pleas, it must use a waiver form with language substantially conforming to Article 1.051(g).